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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

JAN 31 1997

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )  
 )  
Implementation of the )  
Telecommunications Act )  
of 1996 )  
 )  
Amendment of Rules Governing )  
Procedures to Be Followed When )  
Formal Complaints Are Filed )  
Against Common Carriers )  
 )

CC Docket No. 96-238

REPLY COMMENTS OF SPRINT CORPORATION

Sprint Corporation ("Sprint") hereby respectfully submits its reply comments on the *Notice of Proposed Rulemaking ("NPRM")*, FCC 96-460, released November 27, 1996 in the above-captioned proceeding.

As set forth in its initial Comments (at 4-7), Sprint believes that the Commission's proposal to require that a "complainant, as part of its complaint, certify that it discussed, or attempted to discuss, the possibility of a good faith settlement with the defendant carrier's representative(s) prior to filing the complaint," *NPRM* at ¶28, is problematic. As Sprint explained, this requirement could itself generate additional disputes particularly over whether the settlement discussions were conducted in good faith. The requirement could also be exploited by a Bell Operating Company ("BOC") to either delay or seek summary dismissal of a complaint brought under §271(d)(6).

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delay or seek summary dismissal of a complaint brought under §271(d)(6).

The comments of several BOCs concerning pre-filing requirements confirm that Sprint's concerns here are not speculative. BellSouth, for example, argues that the Commission should dismiss complaints where the settlement discussions were not were not conducted in "good faith." To avoid dismissal on this ground the complainant would, or so BellSouth's argument goes, have demonstrate that the discussions "involve[d] a substantive interchange over disputed facts and an affirmative indication from the carrier that it is unwilling to settle a specific problem...on terms agreeable to the complainant." BellSouth at 7.

Bell Atlantic argues for "more extensive pre-filing activity than proposed in the Notice." Under Bell Atlantic's proposal, the potential complainant would submit a letter to the potential defendant "setting out the nature and basis of [complainant's] claim in sufficient detail that the defendant can provide a meaningful response." The potential defendant would be afforded some period of time "to be negotiated between the parties" in which to prepare and furnish such response. Bell Atlantic at 3.

Similarly, NYNEX would have the Commission require that the complainant "seek the intervention of a Commission-certified mediator before filing a complaint." NYNEX at 3. If the mediation proved unsuccessful the complainant would have "to

But "if the mediator reports that the complainant did not pursue a settlement discussion in good faith," the complaint would be rejected. *Id.* at i.

Any of these suggestions, if adopted, could prevent a person harmed by a BOC's failure to meet the conditions for receiving approval to provide in-region interLATA services from seeking prompt relief from the Commission. Certainly, such suggestions would enable a BOC to control the timing of when a complaint against it could be filed. Under BellSouth's proposal, the BOC could simply avoid stating that it was unwilling to settle a complaint and thereby prevent the complainant from certifying that it had sought a good faith settlement in the dispute. Bell Atlantic's "standard" that the complainant be required to submit a letter to the defendant presenting its claim in "sufficient detail" so that the defendant could prepare a "meaningful reply" is so vague that it would enable the BOC to argue either that the letter was not "detailed" enough to permit such reply or that the claim was so complicated that it needed an extended period of time in which to investigate and prepare a "meaningful" answer. And, NYNEX's requirement for mediation not only would, as a procedural matter, complicate any pre-filing settlement discussions by the need to accommodate the schedule of an independent third party, *i.e.*, the mediator, but it could also be used by the defendant BOC to minimize the chances that it would have to defend itself before the Commission. As long as the BOC


maintained that it was willing to mediate the issues even though it had no intention of ever reaching an agreement, the complainant presumably would have to participate -- and consequently delay the filing of a complaint -- or else risk a report from the mediator that it "did not pursue a settlement discussion in good faith" and have its complaint summarily dismissed by the Commission.

The probability of disputes and delay that would accompany any requirement for pre-filing settlement discussions justifies abandonment of the proposal. Moreover, as AT&T explains, such requirement "would be an improper restriction on a party's unconditional statutory right to file a complaint." AT&T at 6. At most, pre-filing activities should be limited to an exchange of information to narrow the scope of subsequent discovery requests and perhaps reduce the controversies and attendant delays which may arise during discovery. See also, MCI's Comments at 6. However, as Sprint explained in its initial Comments, if the Commission decides to adopt its proposal to require pre-filing settlement discussions, it must guard against the risk that the defendant will seek to use such discussions to delay the filing of a complaint by allowing the complainant the discretion to file its complaint no more than 5 business days after informing the defendant of the potential complaint and offering to discuss settlement. Moreover, the Commission should make clear that it will not tolerate any disputes over whether

the complainant's offer to discuss settlement was made in good faith or whether the actual discussions were conducted in good faith.

Respectfully submitted,

~~SPRINT CORPORATION~~



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January 31, 1997

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I hereby certify that a copy of the foregoing Reply Comments of Sprint Corporation was sent by hand or by United States, first-class mail, postage prepaid, on this the 31st day of January, 1997, to the below-listed parties:

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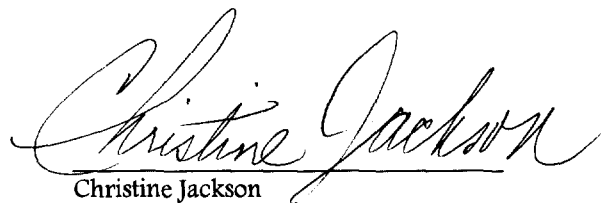
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